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No. 88-1783

In The

Supreme Court of the United States

October Term, 1989

FRANK ASTA, et al.,

Petitioners,

v.

STATE OF ILLINOIS,

Respondent.

BRIEF OF AMICUS CURIAE ON BEHALF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES, THE NATIONAL ASSOCIATION OF MANUFACTURERS, THE CHICAGO ASSOCIATION OF COMMERCE AND INDUSTRY, THE ILLINOIS CONSTRUCTION INDUSTRY COMMITTEE, THE ILLINOIS RETAIL MERCHANTS ASSOCIATION, THE ILLINOIS MANUFACTURERS' ASSOCIATION, THE ILLINOIS SELF-INSURERS ASSOCIATION, THE MANAGEMENT ASSOCIATION OF ILLINOIS, AND NATIONAL ELECTRICAL MANUFACTURERS ASSOCIATION IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

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This brief *amicus curiae* is filed with the written consent of the parties. The letters giving consent have been separately filed with the Court.

I. INTEREST OF THE AMICI CURIAE

The Chamber of Commerce of the United States is a federation consisting of several thousand state and local

Chambers of Commerce and trade and professional associations as well as more than 180,000 corporations, partnerships, and proprietors who maintain direct membership. It is the largest association of business and professional organizations in the United States.

The Chamber regularly represents the interests of its member employers in important labor relations and employment law matters before the courts, the United States Congress, the Executive Branch, and the independent regulatory agencies of the Federal Government. Such representation constitutes a significant aspect of the Chamber's activities. The regulation of safety and health matters at business establishments has become of increasing concern in recent years, and virtually all of the Chamber's members are directly affected by this increasingly important facet of regulatory law.

The National Association of Manufacturers of the United States is a voluntary business association of approximately 13,500 companies and subsidiaries. NAM's member companies employ 85% of all manufacturing workers in the United States and produce over 80% of the nation's manufactured goods. The NAM also is affiliated with 158,000 additional businesses through its Associations Council and the National Industrial Council.

The Chicago Association of Commerce and Industry has approximately 4,100 members in the eight county Chicago Metropolitan Area. While this Association represents the business community in the Chicago area with respect to a wide variety of matters, its principal current concern is economic development. In its efforts actively to encourage employers to stimulate job retention and attraction to increase their business activity in the Greater Chicago Metropolitan Area, the Association regularly represents its members before legislative and administrative bodies in an effort to keep regulation from becoming

oppressive and in an effort to make it simple and understandable wherever possible.

The Illinois Construction Industry Committee is composed of eleven construction industry trade associations representing major general contractors and subcontractors in Illinois engaged in commercial industry, utility, road and bridge, and public buildings construction. The Committee represents over a thousand member employers which collectively employ the overwhelming majority of construction workers in nonresidential construction in Illinois. Its members are deeply concerned with health and safety matters, and the Committee attempts to keep its members advised in an understandable way of the requirements of federal, state, and local regulation of workplace safety and health.

The Illinois Manufacturers' Association, representing 5,400 industrial firms in Illinois, was founded in 1893. While the I.M.A. is the oldest and largest state association of manufacturers, most of its members are small, with nearly 80% of its participating firms employing fewer than 100 persons. The I.M.A. actively represents manufacturers before the Illinois General Assembly, before administrative agencies, and the courts on matters of concern to industry. Of particular concern to manufacturers are laws and regulations governing employee health and safety.

The Illinois Retail Merchants Association includes local chambers of commerce, retail committees, and shopping center organizations as well as retailers in all merchandise lines. Its membership includes over 25,000 Illinois retailers accounting for approximately 85% of all retail sales in Illinois. It has long been concerned with labor and employment matters and represents its members with respect to proposed legislation and regulation with respect to health and safety issues.

The Illinois Self-Insurers Association includes several hundred major Illinois employers who self-insure their workers' compensation liability. They are engaged in a wide diversity of business activity, and together they employ over 400,000 persons in the state of Illinois. Many members have nationwide operations and thus employ a substantial number of employees in other states as well. Because this Association concerns itself particularly with workplace injuries, it has a deep and abiding interest in regulation of safety and health matters.

The Management Association of Illinois is comprised of approximately 2,000 Illinois employers and thirty Illinois employer associations. Its purpose is to offer employers methods of improving their organizational effectiveness by providing superior value training, human resources consulting, information, benefit programs, and legislative representation to ensure improved labor and employee relations laws and regulations.

National Electrical Manufacturers Association is the major national trade association for manufacturers of products which generate, transmit, and distribute electrical energy. NEMA has approximately 600 member companies located throughout the United States. Its Magnet Wire Section includes 13 members whose total annual sales account for over 90% of the magnet wire sold in the United States.

All of the Associations joining in this brief recognize that the safety and health of employees is a vitally important matter. In today's complex and highly technical world, the development and enforcement of appropriate safety standards is no simple task. OSHA has been charged with that task. Its complexity may be demonstrated by the fact that the preamble to the final rules and regulations governing only workplace air contaminants, which issued January 19, 1989, runs to 587 pages! OSHA

is vigorously pursuing the development and enforcement of all of its multitudinous and complex standards. In fiscal year 1988, according to the November 11, 1988, OSHA Inspection Report issued by the U. S. Department of Labor, 58,354 inspections were conducted, 154,884 violations were found, and penalties totalling $45,004,519 were imposed. American industry accepts the fact that federal safety laws must be, and are being, actively enforced.

But the business community is deeply concerned about the potential regulatory chaos which is portended by the decision of the Illinois Supreme Court in this case. The import of this decision is that individual States Attorneys in the 102 counties in Illinois and, foreseeably, in thousands of counties throughout the United States will have the authority, each in his or her own way, to seek to regulate workplace safety. They will be permitted to present to courts and juries their own doubtlessly diverse and potentially conflicting standards for what constitutes a safe workplace. They will then be authorized to prosecute, as criminals, the officers and managers of employers for having failed to meet these unknown, unknowable, and potentially conflicting sets of workplace safety standards.

Amici strongly believe that Congress intended, when it enacted the OSH Act, that workplace safety and health should be a federal concern and that its complexity in today's world demanded centralized, uniform, federal regulation. The employers represented by the *amici* are devastated by the prospect of being subject, in addition to the comprehensive federal regulations, to criminal prosecution on workplace safety matters by scores of States Attorneys across the nation, inexpert in complex safety issues, operating under no uniform standard, charging about like loose cannons on the deck of a tossing ship.

Because of these concerns, the named employer associations urge this Court to grant the Petition for a Writ of Certiorari herein.

REASONS FOR GRANTING THE PETITION

A. It Is Important for this Court to Clarify Whether the Doctrine of Preemption, as Applied to OSHA, Requires Nationally Uniform Workplace Safety Standards

1. The Act and the Regulations Issued Under It Clearly Delineate Its Intended Preemptive Scope

In the Occupational Safety and Health Act, Congress authorized the Secretary of Labor to set mandatory occupational safety and health standards for all businesses affecting interstate commerce (29 U.S.C. §655[b][5]). Employers and employees must comply with those standards (29 U.S.C. §654). The Secretary of Labor is authorized to conduct investigations, conduct on-site inspections, and institute enforcement proceedings (29 U.S.C. §§657, 658, 659, 662). The statute provides for civil and criminal penalties (29 U.S.C. §666).

The statute also addresses the extent to which individual states may regulate safety in the workplace. Sections 18(a) and (b) of the OSH Act (29 U.S.C. §667[a] and [b]) allow for state agency regulation over areas where OSHA has set no federal standards. It also allows for state plans regulating areas as to which federal standards have been set, but requires that any such plan be subject to approval by the Secretary of Labor. Illinois once submitted, but subsequently withdrew, a State plan. It had none at any time relevant to this proceeding.

The OSHA regulations, 29 C.F.R. §1901.2, state:

> *Section 18(a)* of the Act is read as preventing any State agency or court from asserting jurisdiction over any occupational safety or health issue with respect to which a Federal Standard has been issued under***the Act.

2. In This Case, Illinois Has Embarked on a Course of Local Criminal Prosecution of the Very Type of Workplace Safety Matters which the OSHA Act Entrusted to Federal Regulation

Petitioners here are five individual officers and agents of Chicago Magnet Wire Corporation (CMW) and the Corporation itself. CMW is an Illinois based manufacturer of coated wire. Petitioners were indicted by a Cook County, Illinois, Grand Jury, having been charged with multiple counts of aggravated battery and reckless conduct under Illinois criminal law. (Ill. Rev. Stat. ch. 38, §12-4[a] and [c] and §12-5.) The individual petitioners also were charged with conspiracy to commit aggravated battery, again under the general criminal laws of Illinois. (Ill. Rev. Stat. ch. 38, §8-2[a].)

The indictments alleged that certain CMW employees sustained injuries due to exposure of the employees to certain substances at the workplace because of the alleged failure of the defendants to provide necessary safety equipment and health monitoring systems, and the maintenance, by the defendants, of dangerous working conditions. The indictments charge defendants with acts constituting a violation of the defendants' duty to provide safe workplaces for their employees.

Petitioners moved to dismiss these indictments on the ground that OSHA preempted any state action because all of the conduct and conditions were regulated by the federal Occupational Safety and Health Act and

because petitioners were in compliance with OSHA regulations. Petitioners' contention that it was in compliance with OSHA regulations has not been contested.

The trial court (the Circuit Court of Cook County) and the Illinois Appellate Court held that the indictments should be dismissed on this preemption ground. The Supreme Court of Illinois has now held to the contrary. It is that decision of which petitioners here seek review.

3. The Illinois Supreme Court Decision Threatens to Destroy the Federally Uniform Safety Standards which OSHA Was Intended to Provide

Amici read the Illinois Supreme Court's decision to say that workplace standards, in the view of the Illinois Supreme Court, need not be uniform. That Court did not read Section 18(a) as being fully preemptive, and said instead:

> We judge that the purpose underlying section 18 was to ensure that OSHA would create a nationwide *floor* of effective safety and health standards and provide for the enforcement of those standards. (Emphasis supplied.)[1]

The Illinois Supreme Court would thus entrust a large area of enforcement to state criminal prosecutions, apparently unconcerned that to do so will leave the determination of regulatory safety standards in the hands of local courts and juries. The Court said:

> While additional sanctions imposed through State criminal law enforcement for conduct also governed

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1. Pet. App. A, p. 10a. Since the Illinois Supreme Court and Appellate Court decisions are included in full in the appendices to the Petition for Certiorari filed with this Court in this proceeding, we will identify quotations from those opinions by references to "Pet. App. ___, p. ___."

> by OSHA standards may incidentally serve as a regulation for workplace safety, there is nothing in OSHA or its legislative history to indicate that Congress intended to preempt the enforcement of state criminal laws simply because of its *incidental regulatory effect*. (Emphasis supplied.)[2]

In response to defendants' argument that to permit such potentially diverse and conflicting locally determined standards would defeat the preemptive intent of OSHA, the Illinois Court said:

> . . . [T]he charges here are based on the defendants' alleged willful failure to remove workplace hazards which create a substantial probability that they will cause injuries to the employees. *Thus employers are not left without guidance as to what standard of care they must meet*. (Emphasis supplied.)[3]

The Court did not discuss *how* the employer is to receive guidance as to what each local court may determine, *post hoc*, case by case, an appropriate standard of safety may be.

Then, ignoring that defendants here had asserted, without contest, that they were in compliance with the federal OSHA standards, and that the Cook County States Attorney had nevertheless proceeded with the instant indictments, the Court went on:

> Too, in practical terms, if a defendant were in compliance with OSHA standards, it is unlikely that the state would bring prosecutive action.[4]

Nowhere in the opinion, however, does the Illinois Supreme Court ever confront directly the crucial threat to federal preemption and to uniform federal safety law enforcement which will be presented if the courts in

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2. Pet. App. A, p. 11a.
3. Pet. App. A, p. 15a.
4. Pet. App. A, p. 15a.

Illinois (and presumably in other states), could each determine on a case by case basis what safety measures are adequate (and inadequate) and thus to devise non-uniform parameters for the "standard of care they [employers] must meet." Each time a county prosecutor seeks indictments under such remotely relevant crimes as "aggravated battery," but, as here, really alleging inadequate safety measures, the prosecutor will be obliged to persuade a court and jury to the prosecutor's views as to what the proper safety measures should have been, but were not. This leaves the determination of safety standards to case by case, jury by jury, county by county determination. No employer will know, in advance, what is expected, in the view of the county prosecutor, in the way of safety standards. The hapless employer will be left to discover that only after the jury has found the employer guilty or not guilty of a serious crime.

Amici urge that it is vitally important that it be determined whether established OSHA standards are, because of preemption, the only applicable standards which can be issued and enforced except when either no federal standard has issued or when state standards are issued under a State Plan approved by the Secretary of Labor.

Any employer should be able to rely upon compliance with uniform, federally established or approved standards and be protected by Article VI of the United States Constitution and the preemption doctrine which has developed thereunder. This Court should carefully scrutinize the Supreme Court of Illinois' holding, instead, that OSHA standards are merely a "floor" and that every county States Attorney is free to argue for such higher standard as he may choose. The Court should look long and hard at the Illinois Court's view that an employer's failure to meet every such locally advocated *post hoc* standard should put employers and their managers in

jeopardy of conviction of felonies such as "aggravated battery" and "reckless conduct".

We respectfully submit that this issue is of vital importance to all of the thousands of employers represented by *amici* and to their colleagues in the business community. We further respectfully submit that it is an issue of vital importance to judicial administration.

4. Federal Preemption Does Not Permit Local Regulation Even By Different Procedures if It Is Aimed at the Same Conduct as That Regulated by the Preemptive Federal Law

The decisions of this Court stand for the proposition that if certain *conduct* is regulated under a "comprehensive legal system in the hands of an expert administrative body,"[5] then the regulation of that *conduct* is indeed exclusively the province of the federal government, and that states may not invade that sphere no matter by what means or in what forum the state intrusion occurs. As this Court has said:

> It is the conduct being regulated, not the formal description of governing legal standards, that is the proper focus of concern.[6]

This Court has also said, in its discussion of preemption in another lead case:

> We have been concerned with conflict in its broadest sense; conflict with a complex and interrelated federal scheme of law, remedy, and administration. Thus, judicial concern has necessarily focused on the *nature of the activities which the States now sought to*

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5. *Motor Coach Employees v. Lockridge*, 403 U.S. 274, 289 (1971).

6. *Id.* at 292.

> *regulate, rather than on the method of regulations adopted.* (Emphasis supplied.)[7]

The Illinois Supreme Court decision here flies in the face of this and other decisions in which this Court has defined and refined the preemption doctrine. The conduct regulated by OSHA through the establishment of standards is the very same conduct which the States Attorney here wants to regulate by criminal trials. *Amici* view the decision of the Illinois Supreme Court which permits such local regulation of federally regulated conduct as a form of New Federalism run amok. But *amici*, most particularly, submit that the question of whether OSHA standards must be applied uniformly throughout the nation is one of vital national importance and presents an issue surely worthy of this Court's review.

B. The Question of Whether the States Are Free Individually to Determine Criminal Penalties for Workplace Safety Violations Is Also an Issue Presented Here and as to Which a Writ of Certiorari Should Be Granted

The Illinois Supreme Court's decision repeatedly lauds what it regards as the salutary imposition by the state of severe criminal remedies for failure of an employer to meet safety goals. The Illinois Court said:

> State criminal law can provide a valuable and forceful supplement [to OSHA regulation] to insure that workers are more adequately protected and that particularly egregious conduct receives appropriate punishment.[8]

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7. *San Diego Building Trades Council v. Garmon*, 359 U.S. 236 at 243 (1959).

8. Pet. App. A, pp. 14a-15a.

Amici do not understand the federal preemption doctrine to permit such local supplementation of a federal enforcement program. Differing penalties and differing remedies are, as amici interpret this Court's decisions, an inherent threat to federal preemption. So, for that matter, are a multiplicity of tribunals.

In *Garner v. Teamsters Union*, 346 U.S. 485 (1953), this Court considered the contention that state and federal authorities might supplement each other and that a private injunction to restrain damage to an employer's business might supplement the remedies for improper picketing under the federal Labor Management Relations Act. The Court rejected that contention, saying:

> It does not follow that the state and federal authorities may supplement each other in cases of this type. [W]hen two separate remedies are brought to bear on the same activity, a conflict is imminent.

Id. at 498.

And at 490, the Court said:

> Congress did not merely lay down a substantive rule of law to be enforced by any tribunal competent to apply law generally to the parties. It went on to confide primary interpretation application of its rules to a specific and specially constituted tribunal and prescribed a particular procedure for investigation, complaint and notice, and hearing and decision, including judicial relief pending a final administrative order . . . *A multiplicity of tribunals and a diversity of procedures are quite as apt to produce incompatible or conflicting adjudications as are different rules of substantive law.* (Emphasis supplied.)

Id. at 490.

More recently, in *Wisconsin Department of Industry v. Gould Inc.*, 475 U.S. 282 (1986), the state of Wisconsin had sought to enforce a statute providing for debarment from state business employers guilty of multiple violations of

the National Labor Relations Act. This Court held that statute to violate the doctrine of preemption, referring to its earlier decision in *San Diego Building Trades Council v. Garmon*, 359 U.S. 236 (1959).

Pointing out that to have sustained the Wisconsin law might have invited similar but perhaps differing laws in other states, the Court went on to say:

> Each additional statute incrementally diminishes the Board's control over enforcement of the NLRA and thus further detracts from the "integrated scheme of regulation" created by Congress.

Id. at 288.

Here too, each separate county prosecution will incrementally diminish OSHA's control over enforcement of the OSH Act and thus further detract from that Act's integrated program of regulation of workplace safety.

Based on these and other decisions of this Court, *amici* urge that the Illinois court's sanctioning of local county prosecutions to supplement what the Illinois Court views as insufficiently punitive federal OSHA enforcement simply does not square with established preemption precedent.

It is not as if Congress had not considered carefully, when it enacted OSHA, what the enforcement scheme ought to be. The legislative history of the Occupational Safety and Health Act is replete with evidence of Congress' careful and deliberate choice of what it concluded were appropriate remedial measures. The first House Bill which marked the starting point for the development of the OSH Act proposed enforcement almost entirely by criminal means.[9] Several other bills included a variety of criminal and civil penalties, but all of these bills were

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9. H.R. 1179, 89th Congress, 1st Sess., 111 Cong. Rec. 88 (1965).

eventually rejected in favor of the legislation offered by Congressmen Steiger and Daniels, which retained essentially a civil penalty structure, but included, as modified in Conference, criminal provisions for willful standard violations which cause employee death.[10]

Particularly in light of this legislative history of OSHA's enforcement provisions, the Illinois Court's decision in the instant case should, we submit, be reviewed by this Court. That Illinois decision proclaims the legitimacy of, and indeed lauds, the imposition by a state (which does not have a federally approved State plan)[11] of a remedial scheme at variance with the carefully considered one specified in a federal law of national application. Such a decision, we submit, warrants careful scrutiny by this Court in light of its body of precedent dealing with the pre-emptive scope of the remedial provisions of federal regulatory laws.

C. The Proper Interpretation of the Savings Clause Contained in OSHA's Section 4(b)(4) Is Also a Matter Well Worth the Attention of this Court

In holding that county prosecutors were free to pursue charges of unsafe work places under state criminal laws prohibiting battery and reckless conduct, the Illinois Supreme Court relied in part on Section 4(b)(4) of OSHA. (29 U.S.C. §653[b][4].)

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10. This history of the development of the law is carefully and accurately described in Levin, *Crimes Against Employees: Substantive Criminal Sanctions Under the Occupational Safety and Health Act*, 14 Am. Crim. L. Rev. 717 (1977).

11. Some approved State plans, consistent with the federal laws, apply criminal penalties for willful violations which result in employee death. Ariz. Rev. Stat. Ann. §23-418; P.R. Laws Ann. tit. 29, ch. 16, §361x; N.C. Gen. Stat. §95-139.

The Illinois Appellate Court had rejected the contention that this section permitted criminal prosecutions of the type brought here, saying:

> The Courts which have interpreted Section 653(b)(4) have consistently found that the purpose of the section was to preserve the existing private rights of injured employees relative to workmen's compensation, state tort law and other common law remedies in favor of employees. (Pet. App. B, pp. 22a-23a.)

Amici contend that both the plain language of the Section and the well-established rule of *ejusdem generis*[12] require that this Section be construed to exempt from preemption only laws of the same type as those mentioned – i.e., the body of statutory or common law relating to compensation of employees for employment related injuries, diseases, or death. The section does *not* state that criminal prosecution of workplace safety regulations is to be exempt from preemption. Such criminal prosecutions necessitating local, rather than federal, determination of workplace safety standards are totally different, in both procedure and substance, from civil proceedings for compensation for employment related disabilities requiring no determinations potentially conflicting with OSHA workplace safety standards.

This is not a situation in which there was a preexisting body of state law and a federal law with legislative history plainly expressing an intent to leave that body of state law operative, as in *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 254 (1984). There is no body of Illinois criminal

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12. That rule is clearly recognized in Illinois. *People v. McBrien*, 144 Ill. App. 3d 489, 494-495, 494 N.E.2d 732 (4th Dist. 1986).

law precedent in which workplace safety standards have been delineated and enforced. The States Attorney seeks to make such law in the face of a set of federally preemptive specific workplace safety standards, procedures for enforcing those standards, and federally prescribed remedies for failures to meet those standards. Similar savings clauses in other federal regulatory laws have been construed to apply only when the "breaches of duty alleged under the [State] common law claims are markedly different from the [federal] statutory claims."[13]

Here the savings clause *was* intended to preserve claims for workers' compensation and other rights or claims markedly different from those arising out of breaches of workplace safety standards. And indeed workers' compensation and similar claims *are* markedly different from the development and enforcement of workplace safety standards. But criminal prosecution based on allegedly unsafe working conditions are *not* different from the matters regulated by the OSHA statute.

This limited savings clause should not be construed to "save" local regulation of workplace safety, and thus destroy OSHA's clearly intended uniform, federally controlled safety standards and enforcement measures. The Illinois Court's sweeping construction of an intended narrow exception to OSHA's preemptive effect should, *amici* respectfully submit, be given the most careful review by this Court.

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13. *Bruss Co. v. Allnet Communications Services, Inc.*, 606 F. Supp. 401 (N.D. Ill. 1985); *see also City of Milwaukee v. Illinois*, 451 U.S. 304 (1981).

D. Granting Certiorari Here Can Halt the Confusion Arising Out of Increasingly Diverse State Court Interpretations of OSHA's Preemptive Scope

Several State courts have held that OSHA preempts criminal prosecutions based on workplace conditions.[14] One Federal District Court has ruled similarly.[15] One state appellate court has come to a contrary conclusion.[16] These and other inconsistencies in state court rulings are described in some detail in Petitioner's brief, pp. 15-21. We will not repeat that discussion here.

But it is plain that confusion both for the business community and for judicial administration is already a problem, and will grow worse if a halt is not called to what threatens to be a proliferation of such state court litigation, leading to further inconsistent interpretations of the preemptive effect of OSHA. This is a further reason why it is important for this Court to accept this case for review.

Of at least equal importance to *amici* is the fact that ever increasing numbers of local prosecutions under state criminal laws are threatening and harassing the managers

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14. *People v. Hegedus*, 169 Mich. App. 62, 425 N.W.2d 729, *appeal pending*, 431 Mich. 870, 429 N.W.2d 593 (1988); *Sabine Consolidated, Inc. v. Texas*, 756 S.W.2d 865 (Tex. Ct. App. 1988).

15. *People v. Kelran Construction, Inc.*, 13 O.S.H. Cas. (BNA) 1898 (Colo., Oct. 6, 1988).

16. *State ex rel. Cornellier v. Black*, 144 Wis.2d 745, 425 N.W.2d 21, *appeal denied*, No. 87-1120-W (Wis. Aug. 23, 1988).

and officers of employers. In Los Angeles alone, there have been eighteen such prosecutions.[17]

While a growing amount of lower court litigation can sometimes cut against a need for certiorari, the converse is true here. This is not run-of-the-mill business litigation. Constitutional rights are at stake. These are criminal prosecutions in which business managers who are attempting to comply with OSHA regulations are now being charged with serious crimes by prosecutors who seemingly pay no heed to the complexities of expert standard setting. Instead, they rush in with broadside charges of battery and other crimes which Congress never intended to be a vehicle for workplace safety regulation.

If, as *amici* urge, all of these local prosecutions are constitutionally beyond the reach of local courts because of preemption, that should be made known by an early decision of this Court. Business persons should not have to be branded as criminals and have their freedom and reputations threatened if these prosecutions are unwarranted and unconstitutional under the Sixth Amendment.

For these reasons, too, certiorari should be granted.

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17. House Comm. on Government Operations, Getting Away with Murder in the Workplace: OSHA's Nonuse of Criminal Penalties for Safety Violations, H.R. Rep. No. 1051, 100th Cong., 2d Sess. 9 (1988).

CONCLUSION

For the reasons set forth above, all of the employer associations who have joined in this amicus brief respectfully request this Court to grant the Petition for Certiorari.

Respectfully submitted,

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